

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:BOS:POSTF-155793-01

BJLaterman

date:

1/22/02

to: Group [REDACTED] Territory 1120

Financial Services: LMSB: [REDACTED]

from: Associate Area Counsel, Boston

CC:LMSB:FS:Boston

in re:

Forms 872

Taxable Years [REDACTED] through [REDACTED] and Taxable Year
ended [REDACTED]

This memorandum responds to your request that we give advice regarding extending the statute of limitations for the above-mentioned consolidated group's taxable years [REDACTED] through [REDACTED] and the taxable year ended [REDACTED]. This memorandum should not be cited as precedent.

[REDACTED] is a Delaware corporation which was a subsidiary of [REDACTED], a United Kingdom corporation. [REDACTED] and its subsidiaries [with [REDACTED] as the parent] filed consolidated federal income tax returns for the taxable years [REDACTED] through [REDACTED] and the taxable year ended [REDACTED].

[REDACTED] is a Delaware corporation formed on [REDACTED] which was indirectly owned by [REDACTED], a United Kingdom corporation, through intermediary holding companies, [REDACTED] and [REDACTED]. [REDACTED] and its Subsidiaries (with [REDACTED] as the parent) filed consolidated federal income tax returns for the taxable years ended [REDACTED] and [REDACTED]. On or about [REDACTED], [REDACTED] changed its name to [REDACTED]. Both [REDACTED] and [REDACTED] have the same EIN([REDACTED]). Consolidated returns were filed by [REDACTED] for the taxable years ended March 31, [REDACTED] and [REDACTED].

In [REDACTED] acquired [REDACTED]. As a result of the acquisition, [REDACTED] acquired [REDACTED] % of the issued and outstanding shares of [REDACTED]. On [REDACTED], [REDACTED] contributed its [REDACTED] stock to [REDACTED]. As a result of

the stock transfer, [REDACTED] became a wholly owned subsidiary of [REDACTED] (now known as [REDACTED] as the result of the [REDACTED] name change). [REDACTED] continues in existence and files as a member of the [REDACTED] consolidated group. [REDACTED] filed a consolidated return for the period [REDACTED] through [REDACTED] and joined in the [REDACTED] consolidated return thereafter.

You have requested advice to what entity can extend the statute of limitations for the [REDACTED] consolidated returns filed for the taxable years [REDACTED] through [REDACTED] and the taxable year ended [REDACTED]. Hartford Area Counsel (LMSB) advised in a Memo dated October 27, 1999 and E-mails dated June 21, 2000, that for the taxable periods prior to the [REDACTED] stock acquisition a current officer or director of [REDACTED] must execute the consent since [REDACTED] acted as the parent for the group and said parent remains in existence.

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters related to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each subsidiary. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a).

Treas. Reg. § 1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect to the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary, which was a member of the consolidated group during any part of the consolidated return year, is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

Temp. Reg. § 1.1502-77T provides exceptions to the general rule. Temp. Reg. § 1.1502-77T provides for alternative agents in certain circumstances and applies to waivers of the statute of limitations for taxable years for which the due date (without extensions) of the consolidated return is after September 7,

1988. Therefore, the regulation is applicable in this case.

Temp. Reg. § 1.1502-77T(a)(1) provides that the regulation applies if the corporation that is the common parent of the group ceases to be the common parent, whether or not the group remains in existence under Treas. Reg. § 1.1502-75(d). Furthermore, Temp. Reg. § 1.1502-77T provides that a waiver of the statute of limitations with respect to the consolidated group given by any one or more corporations referred to in paragraph(a)(4) of the section is deemed to be given by the agent of the group.

Subparagraph(a)(4)(i) lists as an alternative agent the common parent of the group for all or any part of the year to which the notice or waiver applies. In this case, the former common parent, [REDACTED] is still in existence. Therefore, this paragraph applies and [REDACTED] is the agent for the [REDACTED] consolidated group for the taxable years [REDACTED] through [REDACTED] and the taxable year ended [REDACTED].

Based on the foregoing discussion, we recommend that you continue to obtain a Form 872 from [REDACTED]. The caption on the Form 872 should read: [REDACTED] [EIN] as agent for the members of the [REDACTED] consolidated group.* On the bottom of the form you should add:* This is with respect to the [REDACTED] consolidated group for the taxable years [REDACTED] through [REDACTED] and the taxable year ended [REDACTED]. This form should be signed by a current authorized officer of [REDACTED]. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified by, Rev. Rul. 84-165, 1984-2 C.B. 305. We further note that the EIN of [REDACTED] should be inserted in the EIN block on the Form 872 and that you should be certain that [REDACTED] is still in existence at the time the Form 872 is signed.

As a final matter, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual (IRM). Specifically, IRM 121.2.22.3 requires use of Letter 907 (DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929 (DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the authorized manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2

and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that §3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. §6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy the requirement, Publication 1035, "Extending the Tax Assessment Period," must be given when you solicit the statute extension.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If we can be of any further assistance, the undersigned can be reached at (617) 565-7855.

BARRY J. LATERMAN
Special Litigation Assistant